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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7221 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RASHMIKANT K SHAH

Versus

STATE BANK OF SAURASHTRA

Appearance:

MR RR TRIVEDI for Petitioner
MR JD AJMERA for Respondent No. 1
SERVED BY RPAD - (R) for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/11/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner in this petition is a Bank Manager
serving in the State Bank of Saurashtra, the respondent

herein (hereinafter referred to as 'the Bank'). At the relevant time, he was a Branch Manager in Dedan Branch of the Bank. Under order dated 17th October, 1987, the petitioner was alleged to have released advances to some of the borrowers in consideration of illegal gratification in cash or otherwise and of indulging in malpractices and was placed under suspension pending further investigation, the disciplinary proceeding and issuance of final punishment. A chargesheet was issued against the petitioner on 15th December, 1987. As many as five charges of illegal gratification were levelled against the petitioner, and the sixth of the charges was in respect of his disobeying the order of transfer whereunder he was transferred to Amreli (main Branch) of the Bank. At the end of the disciplinary proceedings, the Inquiry Officer appears to have opined that five charges of receiving illegal gratification/mal practices were not proved, however, the charge no. 6 in respect of the transfer order of the petitioner was held to have been proved. Pursuant to the report of the Inquiry Officer, the Disciplinary Authority under his order dated 26th October, 1989, exonerated the petitioner of the five charges of receiving illegal gratification and of malpractice, however, held the petitioner guilty of the sixth charge in respect of his transfer. The petitioner was, therefore, punished by "withholding of two increments in his time scale of pay with cumulative effect." It was further directed that the period of suspension shall not be treated as period on duty for all the purposes. Feeling aggrieved, the petitioner preferred the Departmental Appeal. The Appellate Authority under his order dated 12th February, 1990, dismissed the appeal and confirmed the order of punishment, as well as the order made in respect of the period of suspension. Feeling aggrieved, the petitioner has preferred the present petition.

It requires to be noted here that the petitioner, in the present petition, has not challenged the substantive order of punishment of withholding of two increments with cumulative effect, but has only claimed that the period of suspension from 17th October, 1987, to 4th November, 1989, shall be treated as period spent on duty. Mr. Trivedi has submitted that in all, there were six charges levelled against the petitioner. The first five of the charges were in respect of the alleged receipt of illegal gratification/ indulging in malpractices by the petitioner. The sixth was that of in respect of disobeying the order of transfer. The order of suspension was made pending investigation and disciplinary action in the allegation of receiving

illegal gratification and of indulging in malpractices. Neither of the charges in that regard has been proved. The order of suspension was, therefore, not justifiable and in that view of the matter, the period spent under suspension ought to have been treated as period spent on duty. He has relied upon some instructions issued by the Central Government (Annexure-F to the petition). However, agrees that the petitioner not being the servant of the Central Government, the said instructions do not apply to him. He has submitted that the service conditions of the Bank employees are governed by the State Bank of Saurashtra (Officers') Service Regulations, 1979. Regulation 69 deals with the suspension of the officer of the Bank. Regulation 69.8 reads as under :

69.8 (i) :

Where the Appointing Authority holds that the officer has been fully exonerated or that the suspension was unjustifiable, the employee shall be granted the full pay to which he would have been entitled, had he not been so suspended, together with any allowance of which he was in receipt immediately prior to his suspension or may have been sanctioned subsequently and made applicable to all officers. The period of absence from duty in such a case shall, for all purposes, treated as period spent on duty.

(ii) In all cases other than those referred to in clause (i) above and where the officer has not been subjected to the penalty of dismissal, the period spent under suspension shall be dealt with in such a manner as the Disciplinary Authority may decide and the pay and allowances of the officer during the period adjusted accordingly ".

He has submitted that the petitioner has been exonerated of the substantive charges, therefore, it is imperative that the period spent under suspension shall be treated as the period of duty and the petitioner shall be held to be entitled to all consequential benefits. He has also relied upon the judgment of the Supreme Court in the matter of KULDEEP SINGH VS THE COMMISSIONER OF POLICE

(AIR 1999, SC 677). He has particularly relied upon the observations - " The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority. " He has submitted that the order of the Disciplinary Authority in respect of the period spent by the petitioner under suspension is also subject to the power of judicial review of this court, and on the facts of the present case, requires to be interfered with.

Mr. Ajmera has contested the petition and has submitted that the order in question is a discretionary order and is made in consonance with the relevant rule (reproduced hereinabove). The same has also been confirmed by the Appellate Authority. This court shall not interfere with such discretionary order in exercise of its power of judicial review, unless it is shown to be illegal or malafide.

I do agree with the submission of Mr. Trivedi that even the order made pursuant to a domestic inquiry is subject to the judicial review by this court. However, the power of judicial review can not be exercised lightly. In the present case, the charges of receiving illegal gratification/indulging in malpractices have not been proved against the petitioner. Nonetheless, the order of suspension made pursuant to the said allegations can not be said to be unjustified. Having regard to the nature and gravity of the charge, it was but necessary for the Bank to suspend the petitioner from service. Besides, even the Disciplinary Authority has observed that the petitioner had no reason not to sanction the loan of the complainant Arjan Limba, though the allegation of receiving illegal gratification was not established. Hence, in my view, though the charges against the petitioner have not been established, the petitioner can not be said to have been exonerated honourably. The action of the petitioner in not sanctioning the loan has not been found to be legal or in consonance with the relevant rules/procedure, nor can the impugned order be said to have been made in contravention of the relevant Regulation 69.8, nor is it vitiated by malafide or extraneous considerations. The same, therefore, does not warrant interference by this court in exercise of its powers of judicial review.

The petition is dismissed. Rule is discharged.

(MS R.M.DOSHIT J)

JOSHI